



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF CHEMICAL SAFETY  
AND POLLUTION PREVENTION

**MEMORANDUM**

**SUBJECT:** Restrictions on Discontinued Uses of Asbestos; Significant New Use Rule (Final Rule)  
(Tier 3; SAN 6677; RIN 2070-AK45; EPA-HQ-OPPT-2018-0159)  
– **ACTION MEMORANDUM**

**FROM:** Jeffery T. Morris, Director  
Office of Pollution Prevention and Toxics (7401M)

**TO:** Alexandra Dapolito Dunn, Esq.  
Assistant Administrator (7101M)

**PURPOSE**

Attached for your signature is a Federal Register notice for a final significant new use rule (SNUR) for asbestos under Section 5(a)(2) of the Toxic Substances Control Act.

**DEADLINE**

No statutory or court-ordered deadlines apply to this action; however, the final SNUR is intended to be published in the Federal Register on or before April 29, 2019.

**OVERVIEW**

Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes the EPA to determine that a use of a chemical substance is a “significant new use.” The EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once the EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1) requires persons to submit a significant new use notice (SNUN) to the EPA at least 90 days before manufacturing (including importing) or processing the chemical substance for that intended activity (15 U.S.C. 2604(a)(1)(B)(i)). TSCA prohibits the manufacturing (including importing) or processing from commencing until the EPA has conducted a review of the notice, made a determination on the notice, and taken such actions as are required in association with that determination (15 U.S.C. 2604(a)(1)(B)(ii)). Those actions could include a prohibition on a use of that chemical substance. Additionally, Section 5(a)(5) of TSCA (15 U.S.C. 2604(a)(5)) authorizes the EPA to require notification for the import or processing of a chemical substance as part of an article or category of articles under TSCA section 5(a)(1) (15 U.S.C. 2604(a)(1)(A)(ii)), if the EPA makes an affirmative finding in a rule under TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) that the reasonable potential for exposure to the chemical substance through the article or category of articles subject to the rule justifies notification. General SNUR provisions are found at 40 CFR part 721, subpart A.

Summary of the Final Action

The EPA is finalizing a significant new use rule for asbestos as defined under the Asbestos Hazard Emergency Response Act (TSCA Title II, Section 202); the “asbestiform varieties of six fiber types –

chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite or actinolite.” The significant new use of asbestos (including as part of an article) is manufacturing (including importing) or processing for uses that are neither ongoing nor already prohibited under TSCA. The agency found no information indicating that the following uses are ongoing, and therefore, the following uses are subject to the SNUR: adhesives, sealants, and roof and non-roof coatings; arc chutes; beater-add gaskets; cement products; extruded sealant tape and other tape; filler for acetylene cylinders; friction materials (with certain exceptions); high-grade electrical paper; millboard; missile liner; packings; pipeline wrap; reinforced plastics; roofing felt; separators in fuel cells and batteries; vinyl-asbestos floor tile; woven products; any other building material; and any other use of asbestos that is neither ongoing nor already prohibited under TSCA.

Persons subject to the SNUR may not undertake any of these activities; they are required to notify the EPA at least 90 days before commencing any manufacturing (including importing) or processing of asbestos (including as part of an article) for a significant new use. The required SNUN provides the EPA the opportunity to evaluate the new use and, if necessary, take action to prohibit or limit the activity. Manufacturing (including importing) and processing (including as part of an article) for the significant new use may not commence until the EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination.

## **SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSES**

The EPA issued the proposed asbestos SNUR on June 11, 2018, which opened a 60-day public comment period that closed on August 10, 2018. Of the 17,912 public comments received, 11,732 are part of a mass mail campaign, 240 are from a second mass mail campaign, 67 are not posted in the public docket due to inappropriate language, and 5,873 individual comments are identified by ID number. However, the majority of commenters misunderstood the action to be bringing back banned uses of asbestos and are not germane to the scope and intent of the rule. Overall, the agency received approximately 30 germane comments, half of which are substantive. Of the substantive comments, most suggested broadening the scope of the SNUR. In response to public comments, the agency is revising the final rule to provide clarifications and ensure all discontinued uses of asbestos are subject to the rulemaking.

Based on public comments received, the EPA is clarifying the following issues in the final rule:

- The distinction between a “new use” under the existing partial ban and a “significant new use rule”
- The agency’s review process of significant new use notices
- Whether and how mining for asbestos is subject to the SNUR
- Whether and how recycling of legacy asbestos-containing material is subject to the SNUR

After consideration of the public comments, in addition to the 14 significant new uses identified in the proposed rule, in the final rule the EPA is broadening the scope of regulated significant new uses of asbestos (including as part of an article) to include:

- Cement products
- Friction Materials (with some exception)
- Packings
- Woven products
- Any other use of asbestos that is neither ongoing nor already prohibited under TSCA

Two issues raised in public comment that the agency is not addressing in this final SNUR are 1) to require TSCA section 12(b) export notification for all asbestos-containing articles; and 2) to require a significant new use notice for *any* asbestos mining in the United States. The agency views including these two issues as actions to go beyond the intended focus of the SNUR. The EPA is currently evaluating options for how these issues might be addressed in the future. For the first issue (export notification for articles), the agency believes this would impact ongoing uses of asbestos, not just uses that have been discontinued as identified in the SNUR. The EPA believes that this issue would be more appropriately addressed during consideration of any potential risk management actions following completion of the EPA's risk evaluation for asbestos, pursuant to TSCA section 6(b)(4), in the event of an unreasonable risk determination. For the second issue (a notice for *any* asbestos mining beyond mining for the significant new uses), the EPA believes, if addressed, that further opportunity for public comment would be useful prior to a final action.

#### Background

In 2016, the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Pub. L. 114-182, 130 Stat. 448) amended TSCA and included statutory requirements related to the risk evaluations of conditions of use for existing chemicals. In December of 2016, the EPA designated asbestos as one of the first 10 chemical substances subject to the agency's initial chemical risk evaluations (81 FR 91927), pursuant to TSCA section 6(b)(2)(A) (15 U.S.C. 2605(b)(2)(A)). The TSCA section 6 risk evaluation focuses on the ongoing conditions of use of asbestos: the circumstances under which asbestos is intended, known, or reasonably foreseen to be manufactured (including imported), processed, distributed in commerce, used, or disposed of in the United States. The ongoing uses are not considered significant new uses and would not require a significant new use notification submission to the agency. The significant new use rule for asbestos serves to complement the risk evaluation by ensuring that any discontinued use of asbestos not otherwise already prohibited (that can resume at any time) must be reviewed and approved by the EPA prior to commencing.

Regardless of the outcome of the risk evaluation pursuant to TSCA section 6(b)(4)(A), the EPA is concerned about the potential for adverse health effects of asbestos based on established sound scientific data indicating that asbestos is a known carcinogen. Since its peak usage, the national consumption of asbestos has declined approximately 99 percent, and asbestos has not been mined or otherwise produced in the United States since 2002. The EPA believes any significant new use of asbestos (including as part of an article) could increase the duration and magnitude of human and environmental exposure to the substance, reverse the declining trend of national import volumes of the substance, and reintroduce exposure scenarios that have become obsolete over the past several decades. Thus, it is imperative that the EPA be notified of any intended significant new use of asbestos (including as part of an article) and be provided the opportunity to evaluate such intended new use.

#### **ANTICIPATED PUBLIC AND STAKEHOLDER RESPONSE**

The final rule will be of interest to multiple stakeholders including industry, government agencies, non-governmental organizations, academia, public health organizations, environmental groups, and the general public who are interested in asbestos regulations and/or are concerned about human and environmental exposures to asbestos.

The EPA expects industry groups to be supportive of the regulation and does not anticipate adverse reaction. National trends have shown a consistent and large decline in the use of asbestos in commerce. Based on extensive agency research of ongoing uses of asbestos and considering the availability of safer

and affordable alternatives, the EPA believes industry is continuing to voluntarily phase out the manufacturing (including importing) and processing of asbestos (including as part of an article).

The tribal, state, and local government reactions are expected to be generally positive as is the reaction of non-governmental, environmental, academic, and public health organizations. The general public will also likely be supportive of the final rule when the purpose and impact of the rule are clearly communicated by the EPA directly to the media. Based on public comments received over the past year regarding the uses of asbestos and the scope of the risk evaluation, the EPA expects interest in agency actions related to asbestos to continue.

## **INTERNAL DEVELOPMENT AND REVIEW PROCESS**

This action was developed with participation from the Office of General Counsel, Office of Policy, Office of Research and Development, Office of Enforcement and Compliance Assurance, Office of Air, and Office of Water.

## **OMB TRANSACTION**

On March 20, 2019, the Office of Management and Budget determined that this final rule is not a significant regulatory action under Executive Orders 12866 and 13563. As such, this final rule was not reviewed by OMB.

## **IMPACTS**

### Potentially Regulated Entities

Potentially affected entities may include, but are not limited to the following list of industries identified by North American Industrial Classification System codes:

- Construction (NAICS code 23)
- Manufacturing (NAICS codes 31 – 33)
- Wholesale Trade (NAICS code 42)
- Transportation (NAICS code 48)

### Economic Impacts

In the event that a SNUN is submitted, costs, included user fees, are estimated to be approximately \$23,000 per SNUN submission for large business submitters and about \$10,000 for small business submitters. Asbestos is already subject to TSCA section 6(a) rules (40 CFR part 763, subparts G and I) that trigger the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b); see also 40 CFR 721.20), and the agency is not requiring export notifications for articles containing asbestos as articles are generally excluded from the TSCA section 12(b) export notification requirements. Therefore, the EPA assumes no additional costs under TSCA section 12(b) for this rule.

### Small Entity Impacts

Analysis supporting the rulemaking indicates that this action would not have a significant adverse economic impact on a substantial number of small entities.

### Recordkeeping and Reporting Impacts

The information collection requirements associated with existing chemical SNURs are already approved under OMB control number 2070-0038 (EPA ICR No. 1188) and the information collection activities associated with export notifications are already approved under OMB control number 2070-0030 (EPA ICR No. 0795). If an entity were to submit a SNUN to the agency, the annual burden is estimated to be less than 100 hours per response, and the burden is estimated to be reduced for submitters who have

already registered to use the electronic submission system. Since asbestos is already subject to a TSCA section 6(a) rule (40 CFR part 763, subpart I) that triggers the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b); see also 40 CFR 721.20) and because the EPA is not proposing to require export notifications for articles, the EPA assumes there is no cost or burden associated with export notifications under the final rule.

#### Governmental Impacts

The EPA has determined that the final rule will not significantly or uniquely affect state, local, or tribal governments.

#### **STAKEHOLDER INVOLVEMENT**

Stakeholder input was obtained through public comment on the proposed *Asbestos Significant New Use Rule* issued in June 2018. Additionally, this action was informed by the related outreach conducted in 2016 and 2017 during the early stages of the TSCA section 6 risk evaluation for asbestos, which involved numerous meetings and consultations with the American Chemistry Council, stakeholders from the chemical manufacturing industry (including the chlor-alkali industry), the International Association of Drilling Contractors, the Motor and Equipment Manufacturers Association, federal government agencies, non-government organizations, environmental groups, and public citizens. The agency also sought and received public comment on the *Preliminary Information on Manufacturing, Processing, Distribution, Use, and Disposal: Asbestos*, released in February 2017, the *Scope of the Risk Evaluation for Asbestos*, released in June 2017 and the *Problem Formulation of the Risk Evaluation for Asbestos* released in June 2018.

#### **PEER REVIEW**

There were no major scientific or technical products supporting this action as defined by the EPA's Peer Review Handbook. Therefore, no support documents were submitted for peer review.

#### **CONTACT**

Please direct any questions regarding the Federal Register notice to the final rule workgroup lead, Robert Courtnage at 202-566-1081 or [Courtnage.Robert@epa.gov](mailto:Courtnage.Robert@epa.gov).

#### **RECOMMENDATION**

I recommend that you sign the attached Federal Register notice.

Attachments